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### Deposited in DRO:

07 September 2012

### Version of attached file:

Published Version

### Peer-review status of attached file:

Peer-reviewed

### Citation for published item:

O'Mahony, D. (2010) 'Northern Ireland.', in Juvenile justice systems in Europe : current situation and reform developments. Mönchengladbach, Germany: Forum Verlag Godesberg, pp. 957-990. Schriften zum Strafvollzug, Jugendstrafrecht und zur Kriminologie., 2 (36).

### Further information on publisher's website:

<http://www.forumvg.de/>

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## Northern Ireland

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### Preliminary Remarks

Northern Ireland's system of youth justice has very recently undergone a significant transformation. A restorative justice approach to deal with young offenders<sup>1</sup> and victims has been integrated in the criminal justice system through a youth conferencing process. Before exploring the new restorative youth conferencing process, this paper looks at the historical development of youth justice. It considers overall crime levels and how the criminal justice system in Northern Ireland deals with young people who have offended. It examines what is known about youth offending in general and looks specifically at a number of innovative approaches to criminal justice practice. The sanctioning system and juvenile criminal procedure is considered, looking at the police led diversionary schemes, the newly introduced restorative youth conferencing process and the court based sanctions. Sentencing practice is looked at detailing diversionary and court dispositions, before examining the use of youth custody, which has also seen significant change. The paper closes with a discussion on current debates and recent findings on the operation of restorative youth conferencing and concludes with an overview of key innovations that are important internationally.

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<sup>1</sup> The terms "Young people" and "Juveniles" are used interchangeably in this chapter and refer to individuals who are criminally responsible, but dealt with in the specialised juvenile or youth courts. Currently this includes individuals 10 to 17 years of age (inclusive), but prior to 2005 it was 10 to 16-year-olds.

## **1. Historical development and overview of the current juvenile justice legislation**

In Ireland<sup>2</sup> like many jurisdictions, prior to the mid-Nineteenth Century, there was little or no differentiation made between the adult and the juvenile offender, either procedurally, or in terms of their allotted punishment. Adults and juveniles were treated in much the same ways and exposed to the full range and force of criminal sanctions, from physical punishments like flogging and hanging to imprisonment and transportation (*Radzinowicz* 1986). Throughout the latter half of the nineteenth century, however, there arose a growing concern for the welfare of children; numerous Poor Law Amendments were passed as well as legislation specifically addressing the needs of deserted and destitute children (see *Caul* 1983). This concern for the welfare of the child was accompanied by an emerging acceptance of the need for a special jurisdiction over juvenile offenders.

The first evidence of a change in attitude toward the treatment of young offenders came in relation to the nature of juvenile dispositions. In Ireland, following the 1854 Act, the Reformatory Schools (Ireland) Act 1858 was passed, and subsequently replaced by the Irish Reformatory Schools Act 1868, the same year that the Industrial Schools (Ireland) Act 1868 was passed. The reformatories were designed to receive children up to the age of 16 who had been found guilty of a criminal offence; the industrial schools were to provide for children up to the age of 14 in need, or "whose circumstances are such that if left in their own surroundings, they are likely to join the delinquent population" (*Caul* 1983; see also *Gelsthorpe/Morris* 1994).

The twin preoccupation with the protection of children and their social control provided the binary core for the Children Act 1908, which, following the precedent set in Illinois, with the passing of the Juvenile Court Act 1899 (*Platt* 1969), established the first juvenile court system in Great Britain and Ireland. The court's jurisdiction extended over civil and criminal proceedings: it consolidated and amended earlier legislation allowing state intervention in the lives of those children in need of care and protection, as well as identifying what was to be done when "children" (under the age of 14) and "young persons" (between the ages of 14 and 16) came into conflict with the criminal law. For the first time, then, a separate court existed with powers to deal with both children in need of care and protection as well as those in conflict with the law.

In relation to the issue of juvenile offending, while the American court system allowed for a primarily welfare-oriented approach treating children not as offenders, but as delinquents in need of care and treatment, the 1908 Act by

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2 Ireland was divided following the Irish War of Independence (1921) into the Republic of Ireland (the 26 counties to the south of Ireland) and Northern Ireland (the 6 counties in the north east of Ireland). Northern Ireland is part of the British United Kingdom.

contrast did not seek to lessen a child's liability under the law, but rather provided for an ameliorated application of the criminal law for young offenders. The influence of earlier reforms ensured that in relation to the criminal process and methods of disposition, welfare considerations gained a more central place in dealings with children. In general, all young offenders were to be heard in a setting that removed them from contact with adult offenders; the Act confirmed the age of criminal responsibility at seven, below which age a child could not commit a criminal offence; it removed the death penalty for all young offenders, as well as prohibiting the imprisonment of "children" (under 14), and restricting the ability of the courts to send "young persons" to prison.

The 1908 Act provided the blueprint for youth justice in Northern Ireland over the next forty years. Before 1950, the only notable change in the Northern Irish juvenile justice system came with the passing of the Children (Juvenile Courts) (Northern Ireland) Act 1942 which enabled two lay "children's guardians" to sit with a magistrate in juvenile cases. Their role however was limited to questioning those persons giving evidence.

In 1950, following the White Paper, *Protection and Welfare of the Young and the Treatment of the Young Offender* (1948), the Children and Young Persons Act (NI) was passed. The 1950 Act replicated many of the changes of the 1933 Act marking a shift away from a policy of punishment, to one with an increased emphasis on "treatment" of the offender and a merging of criminal and welfare concerns that placed the welfare of the child as paramount. The Act reinforced the principle that the juvenile court should sit separately from the adult criminal court; abolished the industrial and reformatory schools in favour of a unified training school system, dealing with children in need of care and protection and juvenile delinquents together; replaced the "children's guardians" with lay representatives having special experience of children and giving them equal voting rights with the presiding magistrate; raised the age of criminal responsibility from seven to eight; redefined the maximum age of a "young person" raising it from fifteen to sixteen; included provision to prohibit publication of the identity of any child before the juvenile court; and, established a Child Welfare Council. Again, most significantly, the new legislation followed the 1933 Act in stating that, "[e]very court in dealing with a child or young person who is brought before it, either as being in need of care or protection or as an offender or otherwise, shall have regard to the welfare of the child or young person" (s.46(1)).

However, the very considerably expanded emphasis on the welfare of young offenders that characterised so much of the thought and policy concerning youth justice in Great Britain during the 1960s remained largely absent from Northern Ireland, especially in relation to proposals that offending should be dealt with in a civil rather than criminal forum. The Children and Young Persons (Northern Ireland) Act 1968 failed to address or respond seriously to any of the issues raised by the Kilbrandon Report (1964), or the two White Papers, *The Child, the Family and the Young Offender* (1965), and *Children in Trouble* (1968).

Rather the Act simply consolidated the principles underlying the previous legislation, re-enacting the 1950 Act. There remained a clear distinction between those children who were in need of care, and those who had come into conflict with the law in a judicial and legislative sense, though both were exposed to a range of disposals such as training school orders to meet their needs and, indeed, children placed in these institutions were dealt with together on loose welfare principles, whether they had been sentenced on welfare or offending grounds.

It was some ten years later before any significant thought was given to the plight of juveniles under the Children and Young Persons (Northern Ireland) Act 1968. This was to come in the form of the highly insightful "Report of the Children's and Young Persons Review Group" 1979, chaired by Sir Harold Black. This report was a fundamental review of the juvenile justice system in Northern Ireland and stressed the overarching importance of prevention and co-ordination, seeking to support children and their families, schools and communities through a wide range of voluntary and statutory agencies responsible for helping children. Importantly the report argued – unlike the British legislation of the time – that child care proceeding and criminal matters should be dealt with in a judicial rather than a civil forum and that care proceedings should be dealt with separately in a court specialising in such matters or a family court. Further, children in need of care requiring placement away from their homes should not be held in the same institutions as children who had offended; that juvenile offenders should be dealt with in a juvenile court solely dealing with criminal matters. As such, the case was made for a clear separation of child welfare cases and criminal matters at both an administrative and judicial level, while emphasising the need for due process in a judicial forum.

Following the Black Report (1979), things were slow to evolve and there was much resistance and political controversy not least from the training school system. As a result, the changes that did occur were mostly cosmetic, including the "Prior Compromise" which led to an administrative separation of care and justice facilities in the training schools in 1982; an Education and Libraries Order in 1989 which brought school truants before the juvenile courts for training; and the 1989 Treatment of Offenders Order which reduced the semi-determinate training school order from three to two years duration.

Nevertheless the Children and Young Persons (Northern Ireland) Act 1968 was to remain the state of the law in Northern Ireland for more than twenty-five years and it was not until the Children (Northern Ireland) Order 1995 was enacted, which, following the lead of the Children's Act 1989 in England and Wales, for the first time since 1908, effectively separated care and education cases from juvenile offenders in the criminal process. The Order was followed by the Criminal Justice (Northern Ireland) Order 1996 and the Criminal Justice (Children) (Northern Ireland) Order 1996 (*O'Mahony/Deazley* 2000).

The most recent changes to youth justice in Northern Ireland have been the most significant to date, with the introduction and mainstreaming of restorative

youth conferencing. Currently the only part of the United Kingdom to adopt mainstreamed statutory based restorative conferencing for young offenders has been Northern Ireland. The new youth conferencing system was introduced on a pilot basis in late 2003. The youth conferencing arrangements have statutory footing in the Justice (Northern Ireland) Act 2002 (*O'Mahony/Campbell* 2006). The new measures provide for two types of disposal, diversionary and court-ordered conferences. Both types of conference take place with a view to a youth conference co-ordinator providing a plan to the prosecutor or court on how the young person should be dealt with for their offence. Diversionary conferences are referred by the Public Prosecution Service and are not intended for minor first time offenders – who are normally dealt with by the police by way of a warning or police caution. For the prosecutor to make use of the diversionary restorative conference the young person must admit to the offence and consent to the process (*O'Mahony/Campbell* 2006).

Court ordered conferences, on the other hand, are referred for conferencing by the court and like diversionary conferences the young person must agree to the process and must either admit guilt, or have been found guilty in court. An important feature of the legislation is that the courts must refer all young persons for youth conferences, except for offences carrying a mandatory life sentence. The court may refer cases that are triable by indictment only or scheduled offences under the Terrorism Act (2000). In effect, the legislation makes conferencing mandatory except for a small number of very serious offences.

The format of the youth conference normally involves a meeting, chaired by an independent and trained youth conference facilitator, with the offender (and his or her guardian), the victim (who is encouraged to attend) and a police officer. Following a dialogue a “youth conference plan” or “action plan” will be devised which should take into consideration the offence, the needs of the victim and the needs of the young person. The young person must consent to the plan, which can run for a period of not more than one year and which usually involves some form of reparation or apology to the victim. Ideally the plan will include elements that address the needs of the victim, the offender and the wider community, so as to achieve a restorative outcome (*O'Mahony/Campbell* 2006).

Overall, the juvenile justice system in Northern Ireland currently caters for children and young persons who are between ten and seventeen years of age (prior August 2005 the age range was 10-16). As in England and Wales, there is a rule of law that a boy or girl under the age of ten years cannot commit a criminal offence. In other words, they are said to be *doli incapax* (incapable of wickedness). Children under the age of ten who do come to the attention of the police for committing offences, however, can be referred to social services and if there are difficulties or problems in the home, or in their social circumstances, these may be dealt with using child welfare legislation (Children Order 1995).

## **2. Trends in reported delinquency of children, juveniles and young adults**

Northern Ireland has relatively low levels of crime, despite the high profile and serious terrorist related offences that have been in the media in the past. Police recorded crime statistics show that recorded crime levels have generally been about half of that recorded in England and Wales. Recently recorded crime levels have increased from 62,222 offences in 1997 to 123,194 in 2005/06 (*Lyness et al.* 2006). This has meant that the crime rate has increased from around 37 crimes per 1,000 of the population in 1997 to 72 per 1,000 population in 2005/06. These changes appear to have largely been caused by new counting rules that came into effect in 1998 which record crimes that were not previously part of the official figures and together with the introduction of a new data collection system have had a significant impact on recorded crime levels. Despite these changes, however, Northern Ireland still has relatively low levels of police recorded crime.

Making direct comparisons between the levels of crime in different jurisdictions is difficult because of differing counting rules, definitions of crime and the contrasting ways criminal justice systems operate and measure crime. However, the most reliable evidence appears to support the view that Northern Ireland has relatively low levels of police recorded crime. For example, if we consider offences defined as "crime index offences" that are used in America, and which are normally included in data from Northern Ireland, it is evident from the seven categories included that Northern Ireland has lower levels of crime per 100,000 population than England and Wales, although similar levels of homicide and rape (*Table 1* below).

Much of crime recorded by the police is property related, in fact 67% of offences in 2005/06 involved property such as theft, burglary or criminal damage, and of these vehicle crime (including theft from and theft of vehicles) accounted for about half of all property crime (*Lyness et al.* 2006). Though property related crime makes up the majority of crime recorded, Northern Ireland generally has had a higher proportion of violent and sexual related offences, with 28% of offences in 2005/06 being recorded as violent, by comparison to 21% in England and Wales (2004/05).

**Table 1: Crime Index Offence Categories 2004/05: Rate per 100,000 population**

Index Offence	Northern Ireland	England and Wales
Homicide*	2	2
Rape**	22	27
Robbery***	81	168
Burglary	786	1,288
Theft	1,565	3,382
Theft of a Vehicle	516	458
All Crime	6,938	10,537

\* Includes Murder, Manslaughter and Infanticide – excludes attempts.

\*\* Includes Attempted Rape.

\*\*\* Excludes Hijacking.

Source: Lyness *et al.* 2005, p. 14.

Victimisation surveys confirm the lower levels of police recorded crime in Northern Ireland. The International Crime Victimisation Survey which surveyed victims of crime in a number of different countries in Europe and North America showed that Northern Ireland had the lowest victimisation rate of any of the participating countries. Only 15% of those questioned in Northern Ireland (for the 2000 survey) had been a victim compared with an international average of 21% (*Hague* 2001). Earlier surveys confirm these findings and the 1995 International Crime Victimisation Survey showed Northern Ireland to have the lowest incidence rate of criminal victimisation (at 27 crimes per 100 population) of the eleven industrialised countries surveyed. Indeed, the rate of victimisation in Northern Ireland was considerably lower than America, Canada or England and Wales (*Mayhew et al.* 1997).

A comparison of the Northern Ireland Crime Survey 2005 (*French/Freel* 2007) with the 2005/06 British Crime Survey also shows that the risk of becoming a victim of crime is lower in Northern Ireland (17.3%) than in England and Wales (23.5%). While England and Wales had higher rates than Northern Ireland for household crime (18.1% v 13.2%) and personal crime (6.4% v 4.3%), the two jurisdictions had similar rates for violent crime (3.4% v 3.1%).

Considering the nature and extent of juvenile crime in Northern Ireland, there are a number of sources of information available that are worthwhile examining. One such source is the self-report method. For example, *McQuoid* (1994 and 1996) conducted a self-reported delinquency study in Belfast in late 1992 to early 1993 and found, like many other similar studies, that a high proportion of young people admitted committing delinquent acts. Indeed, about



75% of 14-21 year olds surveyed admitted committing at least one delinquent act at some time in their lives. A further 47% said they had done so in the past year. These figures did not include very minor offences like "status offences" or alcohol consumption (see *Table 2*).

**Table 2: Self-Reported Delinquency – Prevalence of Delinquent Behaviour *Ever* and *Last Year* (study from 1992/93)**

Type	Ever N	In %	Last Year N	In %
Property Offences	457	51.8	225	25.5
Violent Offences*	560	63.4	210	23.8
Drug Offences	219	24.8	176	19.9
Overall Delinquency**	667	75.5	418	47.3

\* Violent Offences includes violence against the person and violence towards property such as vandalism.

\*\* Overall Delinquency excludes alcohol and problem behaviour.

Source: Adapted from *McQuoid* 1996, p. 95-96.

*McQuoid's* (1994) research confirms how widespread delinquent behaviour is, particularly during adolescence and young adulthood. But, the majority of delinquent acts disclosed were relatively trivial in nature, including such things as bus-fare evasion, spraying graffiti or less serious acts of vandalism. Relatively few young people admitted committing much more serious acts, such as violence against the person or drug-related offences. The research reveals that 88% of the most recent offences had gone undetected by the police and frequent offenders tended not to be specialists, but involved themselves in a range of offences involving property, violence and drugs. The survey also found that the peak age for offending was concentrated in the 18-19 age bracket and proportionately more boys admitted to both offending and more serious offending than girls.<sup>3</sup>

Conviction data in Northern Ireland confirms that young people are much more likely to be convicted of an offence, but as they get older they become

3 These general findings have been confirmed by other international studies. For example, a Home Office self report study, conducted in England and Wales (*Graham Bowling* 1995), focusing on 14 to 25 year olds, found that about half of the boys and one third of the girls admitted offending. This research found that boys were proportionately more involved in offences such as property crimes, and just under half of the boys admitted property offences while only a quarter of the girls admitted such offences. Violent crimes were also admitted to by one third of the boys and one tenth of the girls. Overall boys were found to be about three times more likely than girls to commit a criminal offence, although they were five times more likely to commit more serious offences.

significantly less likely to engage in crime (*Lyness et al.* 2006). These data support the hypothesis that much youth criminality occurs with their transition into adulthood, in a period when boundaries between right and wrong are often tested, but as young people mature find employment and stability in their lives, they largely grow out of crime (*Rutherford* 1992). These general findings are important especially in terms of how youth crime is best dealt with. It is neither necessary nor productive to involve the criminal justice system with every minor act of delinquency, especially given the vast majority of young people desist from offending as they mature into adulthood.<sup>4</sup>

### **3./4. The sanctioning system (kinds of informal and formal interventions) and juvenile criminal procedure**

The sanctioning of criminal behaviour by young people in Northern Ireland takes place at three levels within the criminal justice system. Firstly at the police level, including diversionary<sup>5</sup> sanctions such as warnings or cautions. Secondly, through the recently introduced restorative youth conferencing process, which can occur at the state prosecution level or at the court level, and is now one of the primary responses to offending. And thirdly, at the court level, when the youth conferencing process has not been used for a specific reason.

#### **Police**

The police are generally the first point of contact and the main gate keepers into the criminal justice system. They have considerable powers of discretion in terms of how they deal with young offenders and use specialist juvenile officers. A dedicated Juvenile Liaison Scheme operated since 1975 and dealt with all young offenders (previously 10 to 16 years of age, currently 10-17 years of age) who came to the attention of the police. This was replaced in 2003 by a Youth Diversion Scheme and specialist officers review all such cases and make referrals as to how juveniles should be dealt with (prosecutors now make the final decision, usually based on police recommendations).

When dealing with cases that come to the attention of the police there are four broad options available, including taking “no further action”, in which case

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<sup>4</sup> Unfortunately there are no statistics available in Northern Ireland that look at the offending of young migrants. Northern Ireland did not experience significant migration, especially over the period of the conflict. In the past two to three years there has, however, been a noticeable influx of migrants, especially from Eastern European countries.

<sup>5</sup> Diversion in this context means diversion away from formal prosecution. It does not involve young persons being diverted into alternative programmes.

the young person is not processed any further than being referred to the Youth Diversion Scheme. This is most commonly used when there is insufficient evidence to establish that a crime was committed, or the offence and circumstances were so trivial it is not considered worth pursuing. Secondly, the police may give an "informed warning" which is an informal action and occurs where there is evidence that a crime has been committed, but a warning is considered sufficient to deal with the matter. Such warnings are usually given to the young person and their parent(s) but they do not result in any formal criminal record for the young person – although a note of these warnings is kept for one year. Alternatively, the police may decide to give a "restorative caution" to the young person. This can only take place if the young person admits to the offence, there is sufficient evidence to prosecute and the young person and their parent(s) gives informed consent to the caution. Police restorative cautions are recorded as part of a criminal record and kept for two and a half years and should the young person re-offend, may be cited in court. The last option is for the police to refer the case to the Public Prosecution Service for prosecution through the courts. This is usually reserved for more serious offences, or where the young person has had previous warnings or prosecutions.

The development of "restorative cautioning" has been led by police forces including the Thames Valley police in England and the police in Northern Ireland. In essence this approach seeks to deal with crime and its aftermath by attempting to make offenders "ashamed" of their behaviour, but in a way which promotes their reintegration into the community, and is delivered by trained officers (*Hoyle et al.* 2002). Research in Northern Ireland, on the restorative cautioning scheme found it to be a significant improvement on previous cautioning practice (*O'Mahony/Chapman/Doak* 2004). While the research found evidence of minor offenders being drawn into the process, it was successful in securing some of the traditional aims of restorative practice, in that reintegration was achieved through avoidance of prosecution and through a process which emphasised that the young person was not bad while highlighting the impact of the young person's offending on the victim (*O'Mahony/Doak* 2004).

One of the major achievements of the Youth Diversion Scheme is that it only resorts to prosecuting a relatively small proportion of young people referred to it. Typically, only about 5-10% of cases dealt with through the youth diversion scheme are referred for prosecution and only about 10-15% are given restorative cautions. The majority (about 75-80%) are dealt with informally, through "informed warnings" or no further police action is taken. In 2002-03 for example, only 5% of cases dealt with by the Youth Diversion Scheme were prosecuted through the courts, 14% were given formal cautions and therefore 81%, were dealt with informally. There has been a general increase in the use of informal measures when dealing with young people who come to the attention of the police and the proportion of cases given "informed warnings" or no further police action has increased over the past ten to fifteen years.

Diversion in Northern Ireland usually refers to diverting individuals out of the criminal justice system, rather than diverting them into some other programme or activity, which is often used in other jurisdictions. Indeed, diverting young people away from the courts is generally a more positive response than formally prosecuting them, and the police have been operating a progressive policy in terms of diverting young people away from formal criminal processing. The police point to encouraging reconviction data to support their policy, which shows that only about 20% of juveniles cautioned in Northern Ireland went on to re-offend within a one to three year follow-up period (*Mathewson/ Willis/Boyle* 1998) whereas about 75% of those convicted in the juvenile courts were reconvicted over a similar period (*Wilson/Kerr/Boyle* 1998).

## **Restorative youth conferencing**

The introduction and incorporation of restorative interventions into the youth justice system in Northern Ireland signals a radical departure from previous responses to youth offending. It builds upon the use of increasingly diversionary practices by which the young person is side-tracked away from the formal court system. Such diversion is employed as an early intervention designed to prevent further offending by the young person, whilst avoiding the potentially stigmatising label of a criminal record (*Becker* 1963).

The new youth conferencing model has similarities with the New Zealand family group conferencing system, which has been in operation since 1989 (see *Maxwell/Morris* 1993); however the Northern Ireland model places considerably greater emphasis on the victim in the process.

### *The Youth Conference process*

The youth conferencing system has statutory footing in part four of the Justice (Northern Ireland) Act 2002. Additionally, The Youth Conference Rules (Northern Ireland) 2003 establish the procedures to be followed when convening and facilitating a conference. The Youth Conference Service was introduced in December 2003 in the form of a pilot scheme and initially was available for all 10-16 year olds living in the Greater Belfast area. In mid-2004, the scheme was expanded to cover young people living in more rural areas, including the Fermanagh and Tyrone regions. Section 63 of the Justice (Northern Ireland) Act 2002 provides for the extension of the youth justice system to cover 17 year olds in the jurisdiction of the youth courts,<sup>6</sup> which took effect from August 2005.

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<sup>6</sup> The youth court is a specialised form of magistrates' court and is made up of a Magistrate and two lay magistrates. A hearing in the youth court is similar to one in the magistrates' court though the procedure is adapted to take account of age of the defendant.

Before it was launched throughout the rest of Northern Ireland, a thorough and independent evaluation of the youth conference system took place.

The youth conferencing system marks an important new role for the Public Prosecution Service<sup>7</sup> and Youth Courts, as it has become one of the primary responses to nearly all young offenders brought for prosecution. Youth conferencing also significantly alters how victims and offenders experience the criminal justice system. In theory, it offers both parties increased involvement in the process and the opportunity to 'reclaim' their case from a professionalized, often alienating system (*Christie 1979; Shapland/Wilmore/Duff 1985*).

Typically, a youth conference involves a meeting in which a young person is provided with the opportunity to reflect upon their actions, and offer some form of reparation to the victim.<sup>8</sup> The victim, who is given the choice whether or not to attend, can explain to the offender how the offence has affected him or her as an individual. In theory, this means that a conference gives the offender the chance to understand their crime in terms of its impact, particularly on the victim, and for the victim to separate the offender from the offence. Following group dialogue on the harm caused by the young person's actions, a "conference plan" is devised. This plan takes the form of a negotiated "contract", with implications if the young person does not follow through what is required of him or her. Agreement is a key factor in devising the "contract", and the young person must consent to its terms. Ideally, the "contract" will ultimately have some form of restorative outcome, addressing the needs of the victim, the offender and wider community.

Two types of youth conferences are provided for in the legislation: diversionary youth conferences and court-ordered youth conferences. Both forms of conference take place with a view to a youth conference co-ordinator<sup>9</sup> providing a recommendation to the Prosecutor or court on how the young person should be dealt with for their offence.

A diversionary conference is convened following a referral by the Public Prosecution Service. The Prosecutor will only make a youth conference referral

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- 7 The Public Prosecution Service is a new independent service that considers all cases referred for prosecution by the police. It was established in 2005, replacing a system whereby the police brought most prosecutions to the courts. The service now makes the decision whether to prosecute or not and handles prosecutions in the courts. Prosecutors usually deal with both adult and juvenile cases referred by the police.
  - 8 Typically a youth conference meeting will last between forty minutes to an hour and a half. Conferences take a considerable amount of time to prepare properly, so all participants including the victim – can fully participate. Normally, it takes the conference co-ordinator the equivalent of about two days of work to set up and run a youth conference.
  - 9 Youth conference co-ordinators are employed directly by the Youth Conferencing Service. They have specialist training in the facilitation of conferences and most staff have employment experience and training in social work, probation or community services.

where he would otherwise have instituted court proceedings. Diversionary youth conferences are not intended for minor first time offenders, who, depending on the seriousness of the offence, will usually be dealt with by the police and given an informed warning with a “restorative theme” or a restorative caution. Instead, diversionary conferences are often initiated as a “follow-up” intervention to curb offending, particularly where there has been previous contact with the criminal justice system. Two preconditions must be in place for a diversionary conference to occur: firstly, the young person must consent to the process and secondly they must admit that they have committed the offence. Where these conditions are not met the case will be referred to the Public Prosecution Service for a decision on whether to continue and, if so, the case may be dealt with through the ordinary court process.

Secondly, a young person may be referred to a youth conference by a court, known as a court-ordered youth conference. Again, the admission or establishment of guilt and consent of the young person are prerequisites for a court-ordered conference to take place. A distinctive feature of the Northern Ireland system is that a court must refer a young person to a youth conference. This is subject to certain restrictions: when a magistrate refers a case they must take into account the type of the offence committed. Only offences with a penalty of life imprisonment, offences which are triable, in the case of an adult, on indictment only and scheduled offences which fall under the Terrorism Act (2000) are not automatically eligible for youth conferencing. In effect, the vast majority of young offenders should be dealt with through the conferencing process. The mandatory nature of court-ordered referrals highlights the intended centrality of youth conferencing to the youth justice system. In jurisdictions where referrals are discretionary, the uptake has often been low which has led to the marginalisation of restorative schemes to the periphery of the justice system (*Shapland et al. 2004; Miers et al. 2001; Crawford/Newburn 2003*).

## Court sanctioning

Young people in Northern Ireland are dealt with in special youth courts,<sup>10</sup> unless they are charged with adults, in which case they may be tried in the adult court and then referred for sentencing to the youth court if found guilty. In the youth court, which is a variation of the Magistrates Court, a panel of three magistrates, one of which is a resident magistrate<sup>11</sup> and the other two lay

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<sup>10</sup> Representatives from the Social Services Department work in the Youth Court and are able to provide reports to the court and conferencing service on the social circumstances and background of the young person.

<sup>11</sup> Resident magistrates are legally trained and preside over the youth court. A resident magistrate sits in the youth court with two lay magistrates and they make sentencing decisions together. The magistrates receive some specialist training to sit in the youth court.

magistrates (at least one of the panel should also be a woman), preside over cases. The principal legislation governing the treatment of young people in the courts (especially up to late 1996) has been the Children and Young Persons Act (Northern Ireland) 1968.

As noted above, most cases that are heard in court have to be referred for youth conferencing. However, the court may exercise its powers of sentencing if the young person does not consent to conferencing, if they have been refused conferencing (by the conference co-ordinator), or if the court rejects the conference plan. Furthermore, if a young person does not admit guilt to a charge the case will be heard in the youth court and guilt or innocence will be established.

Young people who appear in the youth court often have legal representation. Free legal representation (Legal Aid) is provided for young people if their parents on a low income. Legal representatives are often practicing solicitors who specialise in criminal and youth court work.

Young people, like adults, also have rights of appeal to the higher courts if there are specific grounds – such as if the correct procedures were not followed. Similarly, the prosecution may appeal a sentence, if it is considered grossly lenient.

The sentencing options available to the court include: a) discharges, which may be absolute or conditional<sup>12</sup>, such as requiring no re-offending within a fixed time frame; b) monetary penalties, which depending on the age of the young person have to be paid by the parents or young person and include fines, recognizance, and orders for compensation, as well as forfeiture and restitution; c) community penalties including community service<sup>13</sup> (age restricted), probation<sup>14</sup>, the attendance centre order<sup>15</sup> and combination order.<sup>16</sup> More recent

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12 An absolute discharge may be imposed where punishment is considered inappropriate. The offender is found guilty but no further action is considered necessary. A conditional discharge may be imposed when the young person is found guilty and they are discharged, on the condition that they stay out of trouble for a set period of time (between 6 months and two years). If another offence is committed during this time, the court can look at the old offence as well as the new one.

13 Community service is unpaid work that must be completed in the community. It is restricted to those 16 years of age or older and the number of hours of such work is restricted by legislation.

14 Probation is a court order which places the individual under the supervision of a probation officer for a specific period of time. The individual may be required to meet regularly with their probation officer and to participate in programmes that address their offending behaviour.

15 An attendance centre order is a court order which requires the individual to attend a particular centre at specific times and to engage in productive activities at the centre (including sports etc.). It is mostly used at weekends.

16 A combination order is a probation order combined with an element of community service

community penalties include the reparation order, which requires the offender to make reparation either to the victim of the offence or some other person affected by it, or to the community at large. The community responsibility order is a form of community service which may be imposed and combines a specified number of hours to be spent on practical activities and instruction on citizenship; d) custodial sentences, including the juvenile justice centre order<sup>17</sup>, which was introduced in 1999 to replace the training school order. It is for a determinate period between 6 months and two years, with half of the sentence spent in custody and the other half spent under supervision in the community and is available for those 10 to 16 years of age. Detention in the young offenders centre<sup>18</sup> is usually used for those 17 to below 21 years of age and the maximum term is four years.

## **5. The sentencing practice – Part I: Informal ways of dealing with juvenile delinquency**

The use of diversionary practices by the police (see above), to move young people away from prosecution through the courts, is an important part of how the Northern Ireland criminal justice system operates. Most young people who offend, especially for the first time, are not referred for prosecution but are dealt with, formally or informally by the police.

The Northern Ireland Youth Diversion Scheme is a specialist unit within the police service which deals with young offenders. The scheme has been highly effective in managing to keep the number of young people prosecuted through the courts to a minimum.

The police in Northern Ireland operate a Youth Diversion Scheme in which specialist officers review all cases involving young offenders (10 to 17 years of age). The youth diversion officers are one of the main gate keepers into the criminal justice system. They have considerable discretion in terms of the recommendations they make to the public prosecutor and on how young offenders are dealt with.

The majority of formal cautions given in Northern Ireland are to male offenders. Annually, around 80% or more of all juveniles cautioned are male. The lower number of cautions given to girls corresponds generally to their lower

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<sup>17</sup> A juvenile justice centre order is a custodial sentence for individuals 10 to 16 years of age. Such individuals are held in secure custody in a specialist unit, the juvenile justice centre.

<sup>18</sup> The young offenders centre is a special prison catering for young adult prisoners between the ages of 17 to 20 years of age. Individuals of 21 years of age and over sentenced to custody are placed in the normal adult prisons.



levels of offending. However, of those girls who do offend, they appear more likely to receive a caution than boys.

## **6. The sentencing practice – Part II: The juvenile court dispositions and their application since 1980**

As noted above, the practice of dealing with young offenders has changed significantly since 2003/04. Many offenders are now referred to youth conferencing when they appear in court. The statistics currently available best reflect the operation of the courts prior to this change and are not yet fully representative of current practice. The statistics are also limited in that they do not give any indication of regional differences. However, to give an oversight of how the courts operated prior to 2004, the following reviews the available statistics.

The majority of juveniles processed through the courts are at the older end of the age spectrum, with 16 year olds generally accounting for about half of all juvenile prosecutions. Few juveniles under thirteen years of age are prosecuted, and over the last decade no more than a few ten year olds have been prosecuted in the courts. There a number of differing patterns in terms of sentence types for which juveniles are convicted. If 2003 is taken as an example (see *Table 3* below), the most common disposal for juvenile offenders was supervision in the community (43%), followed by conditional discharges (33%), then fines (10%) and immediate custody (7%). Those indictable<sup>19</sup> offences most likely to result in a custodial sentence for a juvenile were robbery (50%) and burglary (18%). For less serious types of offences, including summary and motoring offences, the most common disposals were conditional discharges, fines and supervision in the community.<sup>20</sup>

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19 Indictable offences are those more serious crimes which, if the individual is an adult, are tried on indictment in the Crown Court by a judge and jury. Triable-either-way offences include some generally less serious offences which, under certain circumstances, are triable either summarily in a magistrates' court or on indictment in the Crown Court. Summary offences are less serious and are tried in a Magistrates' Court before magistrates with no jury.

20 Supervision in the community includes the probation order, community service order, combination order, and attendance centre order.

**Table 3: All court juvenile disposals (percentages) 2003**

Crime Category	Immediate Custody	Suspended Custody	Supervision in the Community	Fine	Conditional Discharge
Percentage of Juveniles	7	2	43	10	33

Source: Lyness *et al.* 2005, p. 59.

Whilst the sentencing pattern for juvenile offenders for indictable and summary offences has fluctuated considerably between 1987 and 2004, especially if absolute numbers are considered, differences in numbers by individual disposals year on year mostly mirror the differences in the overall rate of convictions. Considering the proportion of juveniles given specific disposals, a clearer picture emerges in terms of the trends in sentencing. Overall, there has been relative stability in the proportions of juveniles given differing disposals over this time period. For example, between about a quarter to a fifth were given custodial sentences and around a third were given community sentences over the years 1987-2003. The more noticeable changes which occurred include a drop in the use of fines, from 18% of all disposals in 1987, to 10% in 2003 and an increase in the use of some community sentences such as the community service order (see *Table 4* below). However there have been very significant changes in the use of custody after 2003, which is detailed below (see *Sections 11* and *12*).

**Table 4: Sentencing of juveniles by all courts: Indictable and Summary Offences**

Sentence/Year	1987	1989	1991	1993	1995	1997	1999	2001	2003	2004	2005*
<b>Prison</b>	2 0%	3 0%	0 0%	0 0%	0 0%	0 0%	5 1%	3 0%	1 0%	1 0%	1 0%
<b>Young Offenders' Centre</b>	37 3%	44 5%	31 4%	22 3%	54 6%	32 4%	48 6%	7 1%	7 1%	14 2%	81 4%
<b>Training School</b>	220 18%	170 18%	170 21%	116 16%	165 18%	141 16%	12 1%	---	---	---	---
<b>Juvenile Justice Centre</b>	---	---	---	---	---	---	18 2%	66 8%	46 6%	48 7%	49 3%
<b>Total Immediate Custody</b>	259 21%	217 23%	201 25%	138 19%	219 23%	173 19%	83 10%	76 9%	57 7%	65 9%	144 10%
<b>Prison Suspended</b>	6 0%	4 0%	1 0%	1 0%	2 0%	0 0%	3 0%	1 0%	0 0%	0 0%	0 0%
<b>YOC Suspended</b>	36 3%	38 4%	19 2%	14 2%	25 3%	24 3%	18 2%	4 1%	14 2%	20 3%	72 5%
<b>Attendance Centre</b>	101 8%	99 11%	80 10%	83 11%	92 10%	61 7%	10 1%	36 4%	89 11%	104 14%	126 9%
<b>Combination Order</b>	---	---	---	---	---	---	0 0%	1 0%	6 1%	6 1%	23 2%
<b>Probation/ Supervision</b>	215 17%	209 22%	172 21%	163 22%	219 23%	293 33%	274 33%	290 33%	216 26%	171 24%	185 13%

Sentence/Year	1987	1989	1991	1993	1995	1997	1999	2001	2003	2004	2005*
<b>Community Service</b>	0 0%	7 1%	26 3%	19 3%	27 3%	22 2%	37 4%	24 3%	49 6%	47 7%	77 5%
<b>Fine</b>	219 18%	134 14%	67 8%	33 5%	55 6%	57 6%	128 15%	98 11%	80 10%	59 8%	348 24%
<b>Recognisance</b>	21 2%	10 1%	12 1%	26 4%	29 3%	42 5%	27 3%	45 5%	31 4%	16 2%	57 4%
<b>Conditional Discharge</b>	354 28%	206 22%	211 26%	244 34%	262 28%	222 25%	241 29%	290 33%	273 33%	205 28%	299 21%
<b>Absolute Discharge</b>	19 2%	10 1%	8 1%	4 1%	5 1%	4 0%	9 1%	15 2%	12 1%	4 1%	13 1%
<b>Youth Conference**</b>	---	---	---	---	---	---	---	---	---	20 3%	72 5%
<b>Community Responsibility</b>	---	---	---	---	---	---	---	---	---	0 0%	32 2%
<b>Other</b>	15 1%	4 0%	7 1%	0 0%	0 0%	0 0%	7 1%	0 0%	7 1%	5 1%	7 0%
<b>All Sentences</b>	1,254	938	804	725	935	898	837	880	834	722	1,455

\* From 2005 statistics include 10-17's before this date they included only 10-16's.

\*\* Refers to the number of youth conference orders completed.

Source: Adapted from Lyness *et al.* 2005 and 2006.

## **7. Regional patterns and differences in sentencing young offenders**

The available statistics in Northern Ireland do not give any breakdown of sentencing by regions.

## **8. Young Adults (18-21) and the juvenile (or adult) criminal justice system – legal aspects and sentencing practices**

In Northern Ireland individuals 18 years and over are treated as adults in the criminal justice system. For individuals between the ages of 17 and 21 the major difference in terms of their treatment in the courts occurs in relation to custodial sentencing, whereby young offenders (17-20) are usually sentenced to the young offenders centre, rather than adult prison.<sup>21</sup> Otherwise, individuals 18 and over are treated in the same manner as adults.

## **9. Transfer of juveniles to the adult courts**

The transfer of juveniles to the adult court in Northern Ireland is wholly exceptional and confined to juveniles who have been charged with homicide, or those that have been co-accused with an adult. If a juvenile is co-accused with an adult he or she may be tried in the adult court, but would be referred back to the youth court for sentencing following a finding of guilt.

## **10. Preliminary residential care and pre-trial detention**

The detention of juveniles before trial is primarily regulated by the Criminal Justice (Northern Ireland) Order 1996 and the Criminal Justice (Children) Order 1998 which together restrict the powers of the courts to detain juveniles in custody. These two pieces of legislation are intended to ensure that the custody of juveniles, either on remand or under sentence is strictly limited to the most serious, violent or persistent offenders. Detention prior to trial is therefore now limited to serious offences, where there is a significant risk of the young person failing to appear, or if there is a risk of further offending or interfering with witnesses. Otherwise, there is a presumption that juveniles will not be remanded in custody.

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21 The sentence of detention in a Young Offenders Centre is used instead of imprisonment for offenders convicted of imprisonable offences, who are between 16 to 20 years of age. The maximum term is four years. Individuals may be transferred to an adult prison when they reach 21 years of age. Exceptionally, individuals under the age of 21 may be given longer sentences (more than 4 years) of imprisonment.

For those juveniles remanded in custody, the average time spent on remand is usually short, between 20 to 30 days (*Hague/Campbell* 2002). Juveniles held on remand include: those charged with an offence whom the courts have ruled should be detained in custody pending a trial; those whom the courts have permitted to be released on bail pending trial but have not as yet met the conditions of the bail; those who had been released on bail but have subsequently been readmitted because they breached a condition of the bail; and those who have been found guilty by the court but have been ordered to be detained in custody pending sentence.

The Police and Criminal Evidence (Northern Ireland) Order 1989 (PACE) also provides that where a child has been charged with an offence and either bail cannot be granted, or where no place of safety can be established for their release, he or she may be detained overnight in custody pending a court appearance.

## **11./12. Residential care and youth prison – Legal aspects and the extent of young persons deprived of liberty and development of treatment/vocational training and other educational programmes in practice**

### **Youth custody**

The use of custody for juveniles in Northern Ireland merits specific attention, because the arrangements have been so different than other jurisdictions. The most common form of custodial sentence for juveniles in Northern Ireland was the Training School Order (no longer in use).<sup>22</sup> In 1997, for example, 141 of the 173 juvenile custodial sentences were made to training schools. Only 32 were to prison establishments like the Young Offenders Centre.

Prior to the end of 1996, juveniles (10-16 years inclusive, at that time) could be sent to training schools if they were found to be in need of care, protection and control (care reasons), for persistent school truancy (education reasons), or if they were convicted of an offence that could attract a custodial sentence (justice reasons). The Children (Northern Ireland) Order 1995 removed the care and education cases from the training school system which meant they only catered for juvenile offenders after this date.

The four training schools in Northern Ireland catered for different populations, such as boys and girls, Catholics and Protestants, as well as mixed populations. Juvenile offenders could also be remanded to a training school while awaiting trial and the training schools were independently operated and

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<sup>22</sup> Note changes under the Criminal Justice (Children)(NI) Order 1998, and Criminal Justice (NI) Order 1996, juvenile justice orders, and custodial sentencing; see *Section 6* below for further details.

managed. The majority of training school places were in "open establishments" and were operated with a welfare ethos. There were also secure placements available to deal with more "difficult" children and those who absconded from the open establishments.

The Training School Order was a semi-determinate sentence, providing authority for detention for a period of up to two years, but a child could be released on license after a period of 6 months at the discretion of the training school managers.<sup>23</sup> Alternatively, a child could be released at any time if release was approved by the Northern Ireland Office. In the mid-1990s, the average period of custody in the training schools for juveniles was around 12 months, however, this varied for individual children and between training schools and some children spent considerably longer periods in custody.

Considering trends in the use of custodial sentences in Northern Ireland, as noted earlier, about a quarter to a fifth of juveniles sentenced between 1987 and 1997 were placed in custody. Over this period the proportion of juveniles sentenced to custody, specifically immediate custody, was not only greater than adults (in 1997 15% of adults were sentenced to immediate custody for indictable and summary offences at all courts as opposed to 19% of juveniles), but also greater than that in England and Wales (where about 12% of juveniles were sent to custody in 1996). Further, juvenile offenders in Northern Ireland spent considerably longer in custody than their counterparts in England and Wales and indeed longer than young adult offenders in Northern Ireland.<sup>24</sup> Although over the decade 1987-97 the number of juveniles given custodial sentences fell from a high in 1987 of 259 to a low in 1993 of 138 juveniles, numbers increased nearly every year to 186 in 1996 which was the equivalent to a rate of 99 per 100,000 population.

There were many problems with the operation of the training school system in Northern Ireland. For example, considering the remand of juveniles in custody while awaiting trial, the duration of these varied considerably and, quite often, children were remanded in secure accommodation for lengthy periods. Furthermore, the period spent on remand was not taken into account as remission or time spent against the subsequent training school order.<sup>25</sup> The training school system housed children for care, justice, and educational reasons, until recently (as noted earlier), and many children from the care side of the system ended up on the justice side, after committing comparatively minor offences. As noted by the Northern Ireland Office in a policy document (*The*

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23 Note however developments under the Criminal Justice (Children) (NI) Order 1998; see *Section 6*.

24 See also CRC A37(b), BR 17(1)(b)(c), 19(1), RDL 1, 2.

25 Note however developments under the Criminal Justice (Children) (NI) Order 1998; see *Section 6* below.

*Way Forward* 1996): "It is an indictment of the present system that around 50 percent of the current justice population were initially referred to the training schools for care or protection reasons".

Reports from the Northern Ireland Office noted that some training school orders were made for minor offences that most probably would not have resulted in custody for adults, and many young people spent longer periods in custody than adults, when convicted of similar offences. Furthermore, some children found themselves "locked" into the system because of a lack of community facilities or because they were thought to come from poor home backgrounds (Northern Ireland Office, 1999). Certainly this was a failure in the system. It is wrong in principle to allow the length of time a child spends in custody to be dependent on their behaviour in custody or their home circumstances, rather than their actual criminal record or the nature of their offence(s). In effect, some juveniles were deprived of their liberty for what was considered by some to be practicable, or even for their own "best interests". More generally, there was a lack of safeguards for the rights of children held in custody, despite the good intentions of most staff in the training school system.

However, very significant changes have occurred in the use of custody for juveniles in recent years. The introduction of the Children (Northern Ireland) Order 1995 removed welfare and educational cases from those who could be sent to custody. The Criminal Justice Act (Northern Ireland) 1996 also curtailed the powers of the courts to impose custodial sentences, limiting them to more serious, violent and sexual offences and the Criminal Justice (Children) Order 1998 extended the right to bail for children except in the most serious cases and introduced a determinate "Juvenile Justice Order". The Juvenile Justice Order ranges from 6 months to two years – half of which is spent in custody and the other half under supervision in the community. The combined result of these legislative changes saw the number of juveniles given custodial sentences drop very significantly, from 23% in 1995 to 10% or less from 2002 to 2005 (see *Table 4* above).

These changes in the legislation combined with the close management of the custodial arrangements for juveniles also saw the juvenile custody population fall dramatically. In the mid 1980s around 200 or more juveniles were held in custody in the four training schools across Northern Ireland. As noted above, they were generally held for less serious offences than adults held in custody. Reconviction data showed that the majority of juveniles released from custody re-offend within three years. *Curran* (1995), for example, showed that 86% of juveniles released from secure custody were reconvicted within three years and Northern Ireland Office figures show 97% of boys released from training schools were reconvicted within three years (*Wilson et al.* 1998). The evidence clearly shows that custody for juveniles was and is ineffective in terms of preventing or reducing re-offending.



The juvenile population (10-16 years) in custody decreased steadily from the 1990's to an average of only about 25-35 persons (held in the Juvenile Justice Centre) over the 2003/04 period (which equates to about 20 per 100,000 of the relevant population) – about half of which were held on remand and the other half were sentenced (*Lyness et al.* 2006).<sup>26</sup> This has been a considerable achievement in turning around what had been a failing system, which allowed young people to be placed and held in custody for reasons other than the seriousness of their offence, to a system which now uses custody for juveniles sparingly and as a last resort.

**Table 5: All court juvenile sentencing (percentage of all sentences)**

Sentence	1994	1996	1998	2000	2002	2003	2004	2005
Juvenile Justice Centre	---	---	---	8	7	6	7	3
Young Offenders Centre	4	5	4	2	1	1	2	6
Training School	21	15	13	---	---	---	---	---
Custody Probation Order	---	---	---	---	---	0	0	1
Total Immediate Custody	25%	20%	17%	11%	8%	7%	9%	10%

Notes: Data from 2005 includes 17 year olds.

Source: Adapted from *Lyness* 2004, p. 69 and data provided by the Northern Ireland Office to the author.

The new juvenile justice centre was completed in 2007 and was built in response to recommendations made by the comprehensive review of the juvenile justice estate and the Criminal Justice Review in 2000. It is the main custodial facility for juveniles in Northern Ireland and has the capacity to provide accommodation for up to 48 young people. While numbers vary the average population is normally between 25 and 30 – mostly boys between 15 and 16 years of age. The new centre accommodates boys and girls who have been remanded into or sentenced to custody by the court, therefore, accommodation

<sup>26</sup> The average population of young people (10-16 years) held in custody in 2005 is similar. Some 26 individuals were held in the Juvenile Justice Centre (aged 10-16). A further 9 individuals (aged 10-16) were held in the Young Offenders Centre (which is designed for 17-20 year old offenders) giving a total average of 35 in custody for 2005.

more specifically designed to meet the needs of girls has been incorporated within the new centre.

The regime of the centre is based around the educational needs of children and provides for their education and support. All of those held in the centre are housed in units of around 6 to 10 children who have their own single rooms. Children typically spend week days in the on-site school and have association time and visits in the evening and weekends. The regime of the facility is based around a points system which reflects the behaviour of the child. Children who follow the regime and behave well are given incentives such as being able to have a television and personal belongings in their room.

### **13. Current reform debates and challenges for the juvenile justice system**

The most recent and major reform to youth justice in Northern Ireland has been the incorporation of restorative youth conferencing as the main criminal justice disposal. This has changed the face of the youth justice system and although it has only been in operation for a few years, early indications appear to be positive. The youth conferencing scheme has been subject to a major evaluation in which the proceedings of 185 conferences were observed and personal interviews were completed with 171 young people and 125 victims who participated in conferences (*Campbell et al.* 2006). This research allows us to reflect on the extent to which the scheme has been successful in achieving its aims and the extent to which it renders the justice system more accountable and responsive to the community as a whole.

The research findings were generally very positive concerning the impact of the scheme on victims and offenders and found it to operate with relative success. Importantly, the research showed that youth conferencing considerably increased levels of participation for both offenders and victims in the process of seeking a just response to offending. The scheme engaged a high proportion of victims in the process: over two-thirds of conferences (69%) had a victim in attendance, which is high compared with other restorative based programmes (cf. *Maxwell/Morris* 2002; *Newburn et al.* 2003; *O'Mahony/Doak* 2004). Of these 40% were personal victims and 60% were victim representatives (such as in cases where there was damage to public property or there was no directly identifiable victim). Indeed, nearly half of personal victims attended as a result of assault, whilst the majority (69%) of victim representatives attended for thefts (typically shoplifting) or criminal damage.

Victims were willing to participate in youth conferencing and 79% said they were actually "keen" to participate. Most (91%) said the decision to take part was their own and not a result of pressure to attend. Interestingly, over three quarters (79%) of victims said they attended "to help the young person" and

many victims said they wanted to hear what the young person had to say and their side of the story: "I wanted to help the young person get straightened out". Only 55% of victims said they attended the conference to hear the offender apologise. Therefore, while it was clear that many victims (86%) wanted the offender to know how the crime affected them, what victims wanted from the process was clearly not driven by motivations of retribution, or a desire to seek vengeance. Rather it was apparent that their reasons for participating were based around seeking an understanding of why the offence had happened; they wanted to hear and understand the offender and to explain the impact of the offence to the offender.

Victims appeared to react well to the conference process and were able to engage with the process and discussions. It was obvious that their ability to participate in the process was strongly related to the intensive preparation they had been given prior to the conference. A lot of work was put into preparing victims for conferencing and they were generally well prepared. Only 20% of victims were observed to be visibly nervous at the beginning of the conference, by comparison to 71% of the offenders. They were also able to engage and play an active part in the conferencing process and 83% of victims were rated as "very engaged" during the conference and 92% said they had said everything they wanted to during the conference.

Overall 98% of victims were observed as talkative in conferences and it was clear that the conference forum was largely successful in providing victims with the opportunity to express their feelings. Though most victims (71%) displayed some degree of frustration toward the young offender at some point in the conference, the vast majority listened to and seemed to accept the young person's version of the offence either "a lot" (69%) or "a bit" (25%) and 74% of victims expressed a degree of empathy towards the offender. It is important to realise, though, that while a minority of victims were nervous at the beginning of the conference, this usually faded as the conference wore on and nearly all reported that they were more relaxed once the conference was underway. Also, the overwhelming majority (93%) of victims displayed no signs of hostility towards the offender at the conference. Nearly all victims (91%) received at least an apology and 85% said they were happy with the apology. On the whole they appeared to be satisfied that the young person was genuine and were happy that they got the opportunity to meet them and understand more about the young person and why they had been victimised. On the whole, it was apparent, for the victims interviewed, that they had not come to the conference to vent anger on the offender. Rather, many victims were more interested in "moving on" or putting the incident behind them and "seeing something positive come out of it".

For offenders it was evident that the conferencing process held them to account for their actions, for example, by having them explain to the conference group and victim why they offended. The majority wanted to attend and they gave reasons such as, wanting to "make good" for what they had done, or

wanting to apologise to the victim. The most common reasons for attending were to make up for what they had done, to seek the victim's forgiveness, and to have other people hear their side of the story. Only 28% of offenders said they were initially "not keen" to attend. Indeed many offenders appreciated the opportunity to interact with the victim and wanted to "restore" or repair the harm they had caused. Though many offenders who participated in conferences said they did so to avoid going through court, most felt it provided them with the opportunity to take responsibility for their actions, seek forgiveness and put the offence behind them. Youth conferencing was by no means the easy option and most offenders found it very challenging. Generally offenders found the prospect of coming face to face with their victim difficult. For instance, 71% of offenders displayed nervousness at the beginning of the conference and only 28% appeared to be "not at all" nervous. Despite their nervousness, observations of the conferences revealed that offenders were usually able to engage well in the conferencing process, with nearly all (98%) being able to talk about the offence and the overwhelming majority (97%) accepting responsibility for what they had done.

The direct involvement of offenders in conferencing and their ability to engage in dialogue contrasts with the conventional court process, where offenders are afforded a passive role – generally they do not speak other than to confirm their name, plea and understanding of the charges – and are normally represented and spoken for by legal counsel throughout their proceedings. Similarly, victims were able to actively participate in the conferencing process and many found the experience valuable in terms of understanding why the offence had been committed and in gaining some sort of apology and/or restitution. This too contrasts with the typical experience of victims in the conventional court process where they often find themselves excluded and alienated, or simply used as witnesses for evidential purposes if the case is contested (Zehr 1990).

Nearly all of the plans (91%) were agreed by the participants and victims were on the whole happy with the content of the plans. Interestingly, most of the plans agreed to centre on elements that were designed to help the young person and victim, such as reparation to the victim, or attendance at programmes to help the young person. Few plans (27%) had elements that were primarily punitive, such as restrictions on their whereabouts, and in many respects the outcomes were largely restorative in nature rather than punitive. The fact that 73% of conference plans had no specific punishment element was a clear manifestation of their restorative nature. But more importantly, this was also indicative of what victims sought to achieve through the process. Clearly, notions of punishment and retribution were not high on the agenda for most victims when it came to devising how the offence and offender should be dealt with through the conference plan.

Overall indications of the relative success of the process were evident from general questions asked of victims and offenders. When participants were asked what they felt were the best and worst aspects of their experience a number of common themes emerged. For victims, the best features appeared to be related to three issues: helping the offender in some way; helping prevent the offender from committing an offence again; and holding them to account for their actions. The most positive aspects of the conferencing were clearly non-punitive in nature for victims: most seem to appreciate that the conferences represented a means of moving forward for both parties, rather gaining any sense of satisfaction that the offender would have to endure some form of harsh punishment in direct retribution for the original offence. Victims and offenders expressed a strong preference for the conference process as opposed to going to court and only 11% of victims said they would have preferred if the case had been dealt with by a court. On the whole they considered that the conference offered a more meaningful environment for them. While a small number of victims would have preferred court, identifying conferencing as "an easy option", this view was not held by the offenders. The offenders identified the most meaningful aspect of the conference as the opportunity to apologise to the victim, a feature virtually absent from the court process. Yet, they also identified the apology as one of the most difficult parts of the process.

A clear endorsement of victims' willingness to become involved in a process which directly deals with the individuals that have victimised them was evident in that 88% of victims said they would recommend conferencing to a person in a similar situation to themselves. Only one personal victim said they would not recommend conferencing to others. For the vast majority who would, they felt the process had given them the opportunity to express their views, to meet the young person face to face, to ask questions that mattered to them, to understand why the incident happened to them, and ultimately, it appeared to help them achieve closure.

Research is planned to assess the impact of the scheme on recidivism rates. It is not expected that the success of youth conferencing will hinge on achieving marked reductions in re-offending. Previous research has shown such schemes can have impacts, but these are normally only slightly better than traditional court based sanctions. Rather, it appears the success of the process lies in its ability to deliver a process of justice that actively holds offenders to account for their actions, whilst giving victims a voice and which gives participants considerably higher levels of satisfaction with both the process and outcomes in terms of delivering a just response to crime.

## **14. Summary and outlook**

Northern Ireland offers a number of insights in youth justice practice that are important internationally. One of the major strengths of the system is its ability

to deal effectively with most juvenile offending at an early stage, using the least formal and intrusive methods. The police Youth Diversion Scheme has been effective in managing to divert the majority of young people referred to it away from formal prosecution. Typically only 5-10% of young people referred to the scheme are prosecuted through the courts, most are dealt with by informal processes including "no further action" or "informed warnings". Research supports the use of less formal measures and re-offending rates for these measures are considerably better than for those drawn into the criminal justice system.

Recent changes including restrictions placed on the use of youth custody and how it is managed have also had a major impact on the number of children held in custody. Northern Ireland had a system that locked up too many young people, often unnecessarily. It now has a very low rate of custody for young people, and unlike many other jurisdictions, seems to be effectively restricting custody to only the most serious and repeat offenders.

The introduction and mainstreaming of restorative youth conferencing has seen the face of criminal justice change dramatically for young people and victims in Northern Ireland. It has been designated as the main response for young offenders and appears to offer significant advantages over the primarily retributive based approach to sentencing. It offers victims a role in seeking to put right the damage caused by offending and addresses their needs, while holding young offenders to account for their actions. In many respect the recent achievements of the new restorative youth conferencing system have been due to the adoption of the model as the main response to offending and the proper funding and facilitation of the scheme. The success of restorative justice as a model is very much tied up in the quality of its provision. Whilst it is by no means a panacea, it offers another way of dealing with youth crime that appears to be more satisfactory, especially for those directly affected by crime. Restorative schemes elsewhere that have been marginalised or poorly funded have often struggled to be effective in terms of providing restorative justice. In New Zealand, research shows that a successful conference also contributed to reducing the chance of re-offending (*Maxwell/Morris* 2002). Therefore, if youth conferencing is to prove effective in achieving long-term positive outcomes – including possibly reducing re-offending – proper funding, high standards of best practice, and due process and procedural equity must be aspired to and attained.

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